

For Retailers' Occupation Tax and Use Tax liability purposes, there are two types of leasing situations: conditional sales and true leases. This letter discusses the taxability of fees often associated with leases. See 86 Ill. Adm. Code 130.420 and 130.410. (This is a GIL.)

May 31, 2006

Dear Xxxxx:

This letter is in response to your letter dated September 30, 2005, in which you request information. We apologize for the delay in responding. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC has compiled a list of fees that apply to lease contracts terminations, and is researching which of these fees are subject to Illinois tax. There are three basic ways to end a lease. The customer can pay their payment for the full term of the lease, and then walk away from the car. In this case, the dealer often buys the car and then resells it as a used vehicle. The customer can also sell it to a third party at the end of the lease. In this case, the third party would purchase the vehicle at the end of the lease for the amount stated on the lease contract. Lastly, the customer can simply purchase the vehicle at the end of the lease for the amount stated in the lease contract.

In each of these cases, certain fees are assessed on the vehicle and charged to the customer's account. The fees in question are:

- Excess mileage
- Excess wear & tear
- Disposition fee (normal termination fee - company's cost for liquidating the vehicle)
- Early termination fee
- Security deposit (if applied to vehicle purchase at the end of the lease or any fees charged to the account)

- Repossession fees
- Late payment fee
- Parking tickets

Not all of these fees are charged to each customer's lease account. This is a total list of all potential end-of-lease fees. ABC would like to know which of these fees (if any) are subject to Illinois tax, as well as if the tax rate for Illinois residents purchasing their vehicles at lease-end differs from the normal retail rate.

Please send all applicable statutes along with your response.

## **DEPARTMENT'S RESPONSE**

We do not have enough information to make a specific ruling regarding these transactions. However, we hope the following information is helpful.

Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

If the contract involved is a true lease the lessee is not subject to Retailers' Occupation Tax or Use Tax on the lease of a vehicle for more than one year. As a result, the lessee is not subject to sales tax liability for any related lease charges such as late charges, vehicle disposal fees, excess wear and tear fees and excessive mileage fees imposed at the end of the lease are not subject to tax.

If the transaction is a conditional sale, please see 86 Ill. Adm. Code 130.420 and 130.410, the Department's rules regarding finance charges, penalties, discounts, and costs of doing business. Without reviewing the contracts, we cannot provide you with specific rulings on those fees and charges.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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